Chapter One

Fair Housing Basics

Section A: A Brief History

The Civil Rights Act of 1866, passed by the Reconstruction Congress, guaranteed property rights to all citizens regardless of race. Unfortunately, it took another hundred years before any real change in fair housing came about with the passage of the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968). The Fair Housing Act represented the culmination of years of congressional consideration of housing discrimination legislation. Its legislative history spanned the urban riots of 1967, the release of the Report of the National Advisory Commission on Civil Disorders (the Kerner Commission Report, which concluded that America was moving toward two societies, separate and unequal), and the assassination of Dr. Martin Luther King, Jr.

On September 13, 1988, President Reagan signed into law the Fair Housing Amendments Act, making major changes to Title VIII, including adding two protected classes—families with children and people with disabilities—strengthening the administrative and judicial enforcement process for U.S. Department of Housing and Urban Development (HUD) complaints and providing monetary penalties in cases where housing discrimination is found to have occurred.

Section B: Fair Housing Laws

Question 1. What fair housing laws apply in Washington state?

The federal Fair Housing Act and its 1988 amendments (FHA) protect people from negative housing actions that are taken because of their race, color, national origin, religion, sex, disability, or family status. Race, color, national origin, etc. are referred to under the law as "protected classes." The FHA also protects against the disproportionately harsh impact of an otherwise neutral policy on members of a protected class. Finally, the FHA protects people from adverse treatment or retaliation simply because they exercised

their rights under the Act.

The Washington State Human Rights Commission (WSHRC) enforces the state law against discrimination, RCW 49.60, which is considered substantially equivalent to the FHA and has the additional protected class of marital status. Three local agencies enforce local fair housing laws that are also considered substantially equivalent to the FHA. These agencies, King County Office of Civil Rights, Seattle Office for Civil Rights, and the Tacoma Human Rights and Human Services Department, have ordinances that include additional protected classes.

Question 2. How do I know which laws apply to my property?

To determine which laws apply to your property, refer to the fair housing agency chart in Appendix A. The chart includes contact information, a description of each agency's geographical jurisdiction, the time period during which a fair housing complaint must be filed and the protected classes each agency covers. Please note that the City of Bellevue also requires that housing providers accept qualified tenants who are on Section 8. The agency chart has contact information for the City of Bellevue as well as two organizations in the state that advocate for fair housing and provide training, education and outreach.

Question 3. How do I know which agency has geographical jurisdiction over my property?

All properties are covered by the FHA and the state law against discrimination. You may always contact HUD or WSHRC with general questions about fair housing laws. However, if your property is located in unincorporated King County or within the city limits of Seattle or Tacoma, contact the local fair housing agency with jurisdiction in these areas. For example, if your property is located just outside the city limits of Kent in King County, it is in an unincorporated area and falls in the geographical jurisdiction of the King County Office of Civil Rights. If your property is located in Bellevue, WSHRC is your local agency unless it involves a Section 8 issue in which case you would contact the City of Bellevue directly. Using the agency chart, determine which fair housing agency is your local agency that can answer your fair housing questions.

Question 4. Some of the protected classes are confusing. What do they actually mean?

The federal, state and local fair housing laws all protect people who have been discriminated against based on their race, color, national origin, religion, sex, familial status or disability. The state law against discrimination has an additional protected class of marital status. The local agencies have additional protected classes including age, sexual orientation, gender identity, Section 8 and political ideology. Refer to the chart in Appendix A for a list of protected classes covered by your local agency.

The general definitions of the protected classes are as follows (check each agency's ordinance for specific definitions):

- **race** includes all races—African-American, Asian, Caucasian, etc.
- **color** refers to the color of one's skin
- **national origin** means the country where one was born
- **ancestry** means the country where one's parents, grandparents or forebears were born (in some jurisdictions ancestry is covered as national origin)
- **religion/creed** includes one's membership (or lack thereof) in an organized religious group and one's spiritual ideas or beliefs
- **sex** includes male and female
- **familial status** and **parental status** are the same thing—the presence of one or more children under the age of 18 in the household. It includes being a parent, step-parent, adoptive parent, guardian, foster parent or custodian of a minor child, as well as any person who is pregnant or who is in the process of acquiring legal custody of a child
- **disability** includes physical, mental and sensory conditions—this is discussed in more detail in Chapter Six
- **marital status** includes being single, married, separated, engaged, widowed, divorced or co-habiting
- **Section 8** means the person participates in the Section 8 housing program
- **political ideology** includes any idea or belief, or coordinated body of ideas or beliefs, relating to the purpose, conduct, organization, function or basis of government and related institutions and activities, whether or not characteristic of any political party or group

- **age** means individuals of any age
- **sexual orientation** means actual or perceived male or female heterosexuality, bisexuality, or homosexuality, and includes a person's attitudes, preferences, beliefs and practices pertaining thereto. In some jurisdictions, sexual orientation includes gender identity
- **gender identity** means a person's identity, expression, or physical characteristics, whether or not traditionally associated with one's biological sex or one's sex at birth, including transsexual, transvestite, and transgendered, and including a person's attitudes, preferences, beliefs, and practices pertaining thereto.

Question 5. The fair housing agency chart lists retaliation. What should we know about that?

Retaliation is an act of harm by the housing provider against a resident or applicant because that resident or applicant has asserted his or her fair housing rights or has been a witness in a fair housing investigation. Examples of retaliation are refusing to make repairs or not making them in a timely manner because the tenant was involved in a discrimination complaint, or evicting a tenant because he was a witness in a discrimination investigation. The way a person asserts his or her fair housing rights can be as informal as a verbal complaint to the manager or as formal as a complaint filed with a fair housing enforcement agency.

It is illegal to retaliate against someone who has raised an issue of discrimination, even if the original allegation of discrimination is not supported by sufficient evidence. Therefore, make sure the actions you take after an allegation of discrimination is raised are not a result of the allegation itself but would have happened regardless of the allegation.

On the other hand, when a tenant alleges discrimination, you are not required to stop taking appropriate actions when that tenant violates the rules. If you are consistent in issuing rule violation notices throughout a person's tenancy, you should be able to support any legitimate actions you take after a tenant makes an allegation. It helps to make a timeline that includes notices issued and complaints made before and after you receive an allegation of discrimination. If you previously did not issue notices for certain violations, then don't start issuing those notices after you receive a complaint. If you have issued violation notices consistently, then you may continue to do so.

Please note that enforcement agencies routinely ask housing providers to delay evictions for 30 days to attempt mediation if an eviction is taking place

right when a discrimination complaint is filed. Housing providers have been very cooperative in working with our agencies in these situations and we thank you for your ongoing assistance.

Question 6. What housing actions are covered by the fair housing laws?

Although not a complete list of all violations, the following housing actions are prohibited by the fair housing laws:

- Refusing to rent to someone or telling someone that a unit is not available even though it is, because of his or her protected class.
- Discriminating in the terms and conditions of a rental because of a tenant's protected class. Some examples include sending rule violation notices to an African American tenant who breaks a rule but not to a Caucasian tenant who breaks the same rule; charging additional security deposits to families with teenagers or people using wheelchairs; allowing a Russian tenant to reserve the community center in the evenings but not a Saudi tenant.
- Making, printing or publishing a notice, statement, or advertisement that indicates any preference, limitation, or discrimination based on a protected class. This is covered in Chapter 2, Filling Your Vacancies.
- Failing to provide reasonable accommodations to a person with a disability, refusing to allow a person with a disability to make reasonable modifications, or failing to meet access requirements. These issues are covered in Chapter 6, People with Disabilities.
- Enforcing an apparently neutral rule or policy that has a disproportionately adverse effect on a protected class, unless the housing provider has a valid business health or safety reason for the rule or policy and is able to show that there is no less discriminatory means of achieving the same result. For example, an apartment may have a zero-tolerance for violence policy, which on its face sounds like a good policy to have; however, in domestic violence situations it could have an unintended, disproportionately harsher impact on women who are the victims of domestic violence in 90-95% of cases. (See Question 44) This type of case is analyzed under a "disparate impact" theory, which is also used to analyze occupancy standard cases. (See Question 59)

Although the FHA includes exceptions to the types of housing covered, in Washington State, most housing situations are covered by state and local laws: apartments leased or rented; condominiums sold, leased or rented; houses sold, leased or rented; housing construction sites; rooming houses; roommate situations (except an individual can specify what sex a roommate

must be); cooperatives; temporary shelters; mobile home parks; empty lots. If you have questions about whether your property is covered by fair housing laws, call your local fair housing agency.

Question 7. How long does a tenant have to file a fair housing complaint in the various jurisdictions?

Generally, an individual must file a fair housing complaint within six months to a year of the harmful housing action, depending on the agency. HUD, WSHRC, and Tacoma Human Rights and Human Services Department require that complaints be filed within a year of the harmful action. King County and Seattle require filing within 180 days. This information is included on the agency chart for quick reference. (See Appendix A) It is a good idea to keep applications, tenant files and other housing-related records on file for a long enough period to be able to respond to housing complaints filed up to a year after an alleged discriminatory housing action takes place. Lawsuits may be filed up to three years after the action.

Question 8. Who may be held responsible for violations?

Fair housing complaints usually name all parties related to the property. In the rental context, this includes property owners, property managers, management companies, housing developers and contractors, advertising media, screening companies, other tenants, even insurance companies. (See Question 82)

Question 9. Who can file a fair housing complaint?

Anyone who has been harmed by a housing action may file a fair housing complaint. Fair housing laws also protect anyone who is harmed because they associated with members of a protected class. For example, if a housing provider treated a Caucasian tenant negatively because the tenant had Asian guests, both the tenant and the guests would be able to file complaints. Fair housing advocacy organizations that spend resources substantiating fair housing violations also may file a complaint. In addition, enforcement agencies have the authority to file a complaint without a complaining party where a fair housing violation merits such an action (for example, if random testing were to show a fair housing violation).

Question 10. What is the relationship between the Landlord-Tenant laws and fair housing laws?

The Residential Landlord-Tenant Act (RLTA, RCW 59.18), the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA, RCW 59.20), and fair housing laws overlap frequently. Fair housing agencies don't investigate violations of the landlord-tenant laws; however, they investigate inconsistent application of tenancy rules based on protected class. The landlord-tenant laws cover rental agreements and leases; deposits and other fees; landlord and tenant responsibilities; a landlord's access to the unit; repairs; moving out and return of deposits; evictions; and abandonment. Fair housing agencies would not investigate whether a landlord properly returned a deposit under the landlord-tenant laws, but it would investigate an allegation that a Caucasian tenant's deposit was returned despite carpet damage when a Latino family's deposit was withheld for similar damage. Also note that the landlord-tenant laws define retaliation differently than the fair housing laws. (See Question 5)

Question 11. A complaint was just filed against us alleging discrimination. What happens now?

Most housing complaints in this state are filed both with HUD and with the state or local fair housing agency that has jurisdiction over the property. Although a bit confusing at first, you will be receiving paperwork from HUD and the state or local agency with jurisdiction. Because the state and local agencies have laws that are "substantially equivalent" to the FHA, HUD contracts with the state and local agencies to handle its investigations. In some circumstances where HUD doesn't have jurisdiction, a case would only be filed with the state or local agency. For example, a tenant in Seattle may file a complaint with the Seattle Office for Civil Rights based on sexual orientation, which is not covered by HUD; or a tenant in Spokane may file a complaint with WSHRC against a housing provider who is renting out a room in her home--housing that is covered by the state fair housing laws but not by the federal Fair Housing Act.

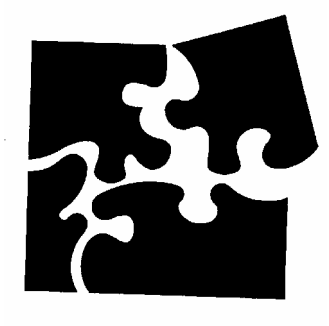
Fair housing agencies all follow a similar complaint processing procedure. You will be required to respond to the complaint within a certain number of days. Most agencies also have a formal dispute resolution process to attempt a voluntary, mutually agreed upon conciliation of the allegations before starting a formal investigation. HUD requires that each agency attempt conciliation within 30 days after a complaint has been filed and throughout the

investigation if early conciliation efforts fail.

The enforcement agencies investigate complaints as neutral fact-finders, evaluating documentation, interviewing relevant witnesses, conducting site visits, and making a final determination once all the evidence has been gathered and both the tenant and housing provider have had the opportunity to respond to each side's evidence.

If an investigator is unable to find sufficient evidence to support the allegations, a case is closed with a no reasonable cause finding. The complaining party may request a reconsideration of a no cause finding and a housing provider is also given the opportunity to respond to the complaining party's request.

If an investigator finds sufficient evidence to support the allegations, and efforts at conciliation fail, a case is closed with a reasonable cause finding and referred to the agency's legal department. A case will either be taken through an administrative process or go through the court system that covers the investigating agency's jurisdiction, depending on the decision of the parties involved.



Chapter Two
Filling Your Vacancies

Section A: Advertising

Question 12. How can I safely advertise or market my property under fair housing laws?

Fair housing laws prohibit making, printing or publishing a notice, statement, or advertisement that indicates any preference, limitation, or discrimination based on a protected class.

Fair housing laws address all types of statements, advertising or marketing used in the rental process, whether your ad appears in a newspaper, on the radio, in magazines, on television, on a little note at the neighborhood laundromat, on a vacancy sign in your window, or through word-of-mouth. The law covers all advertising.

Remember, the law also prohibits making any statement indicating a preference or limiting housing based on someone's protected class. For example if a manager tells a family applying for a unit that they might prefer an apartment down the street that has more families and a playground, this statement is included as a prohibited activity under fair housing laws.

Question 13. Who do the advertising guidelines cover?

The prohibition against discriminatory advertising applies to all housing situations described in Question 6, including single-family and owner-occupied housing that is otherwise exempt from the FHA.

Question 14. What are the requirements regarding fair housing posters and logos?

Fair housing posters and logos are not required but displaying them in your

advertisements or in your common areas and leasing offices is a great way to show that your housing facility complies with fair housing laws. Some housing providers use the Equal Housing Opportunity logo to show that they do business in compliance with fair housing laws. Free posters are available from the fair housing agencies for each jurisdiction that you can use to alert your applicants and tenants to your commitment to fair housing.

Question 15. What should I know about marketing my properties using ads with human models or drawings?

Avoid using pictures or images that show a preference or discourage anyone because of his or her protected class. For example, a series of newspaper ads publicizing vacancies for an apartment complex using only Caucasian models over a period of weeks could be found to be a violation of fair housing laws. If you customarily use advertising with photographs or drawings of people, try to use men, women, children, people with disabilities, and people of all races, nationalities and ages in a way that reflects the population as a whole.

Question 16. What can I say about my property?

The type of language you use to advertise can pose fair housing problems. Avoid using words or phrases that show a preference or discourage anyone because of his or her protected class. For example, avoid phrases such as "Christians only," "single adult community" or "perfect for mature professionals"—they not only implicate fair housing laws, they limit your marketing to prospective tenants.

It is appropriate to describe features that make a unit desirable, such as the size and location of the unit, rental price, utilities included, laundry room, pool, etc. If you describe the property itself and not the targeted audience, you are safer under fair housing laws.

Question 17. Can I ever affirmatively market to a protected class?

In some limited circumstances under fair housing laws, you may affirmatively market your units to a protected class:

- you may advertise that you have units that are accessible for people with disabilities
- you may advertise amenities such as a playground and state that families are welcome
- you may advertise that you welcome applicants on Section 8

Question 18. What other things can I do to comply with fair housing laws in advertising?

Be sure that everyone involved in advertising your available units is aware of your advertising guidelines. Inform your on-site managers, off-site property management company, and any advertising media you use that you follow nondiscriminatory advertising standards. If you use an advertising service that posts available rentals at their storefront location, make sure that they are not using discriminatory statements in their binders.

To expand your marketing options, consider advertising sources such as minority newspapers, social services agencies and organizations for people with disabilities.

Section B: Application and Screening Process

Question 19. How can I be sure my screening process meets fair housing guidelines?

Property owners and managers have the right to determine if a prospective tenant is able to pay the rent and follow the rules. While screening is necessary to insure that you get qualified, responsible tenants who pay their rent on time, you must screen in a manner that complies with fair housing laws.

You will find it easier to respond to a fair housing complaint if you have a clear, written screening policy and if you make sure that all employees involved in the rental process are aware of and follow the policy consistently with all applicants. If you use a tenant screening agency, make sure they are aware of your screening policy and that they follow the policy consistently. Be certain that the agency is aware of and complies with fair housing laws.

You may be able to prevent potential fair housing complaints if you tell prospective tenants about your screening policies and the criteria that you will use in evaluating their applications. Make your rental decisions in a fair, objective and consistent manner and most importantly, communicate your decision to the applicant honestly and quickly.

While it is important that your screening policy is applied consistently, some prospective tenants may require special consideration:

- People with disabilities may need reasonable accommodations and/or reasonable modifications either to go through the application/screening process or to make the property available to them.

- If you have a policy of not renting to individuals who have had a history of police activity at their residence, evaluating applicants who have been victims of domestic violence in the same manner may be considered discriminatory.
- New immigrants to this country can present challenging screening issues. You may want to look at alternative methods/documents in determining whether they meet your screening criteria. (See Appendix B)

Question 20. If several applicants are competing for the same apartment, can I choose the applicant I believe will be the best based on my experience?

While experience is invaluable, it is important to make sure one's experience is not influenced by biases that could be discriminatory. Some individuals who "look" okay turn out to be bad tenants; however, a housing provider working on assumptions and experience alone won't know that until after entering into a lease agreement. You may have results that are more consistent and fewer discrimination complaints if you establish a fair screening process and apply it equally to all prospective tenants.

If several applicants are competing for the same apartment, it may be helpful to screen your applicants on a first-come, first-served basis, then stop screening when you reach a qualified applicant who meets your screening criteria and offer the unit to that applicant. It's a good idea to date and time stamp the applications; then you know the exact order in which you received them. Pre-printed documents may help to ensure that you are gathering the same information from every applicant, and that you aren't asking for any inappropriate information.

Question 21. Can I say that an apartment is not available if I don't think some applicants would make good tenants?

If you misrepresent that a unit is not available when it actually is, you may increase the risk of having a fair housing complaint filed against you. It is safer to rely on your screening process, not your assumptions, to determine if the applicants would make good tenants. Every prospective tenant has different needs and preferences for housing. Let them see the range of what you have available so they will be able to choose a dwelling that's right for them.

Complaints are often filed because a landlord told someone there were no

vacancies and shortly after told someone else there were. Again, you may be able to avoid a potential fair housing complaint if you are clear and consistent with information about upcoming vacancies, current vacant apartments that are not yet ready to be occupied (due to cleaning, repairs), and apartments that are ready to be occupied.

Note: You may have heard of the "Secret Shopper" who visits housing complexes to see what type of customer service is offered. This same tool is used by fair housing agencies to either assess a current complaint or randomly test a market for fair housing compliance. Any applicant coming to apply for an available unit could be a fair housing tester, so be on notice!

Question 22. Is it legal for a rental manager to request to see a photo ID from prospective applicants?

Some housing providers and real estate agents have established a policy of requesting identification from prospective applicants, either for safety reasons or to verify identity. Fair housing laws do not prohibit such a practice as long as the request is not based on an applicant's protected class. For example, requiring ID only from African American males would be discriminatory. Also, please be aware that requiring a specific form of photo ID, such as a driver's license, may have a disproportionately adverse effect on members of a protected class since certain people with disabilities or from other countries may not have driver's licenses. Appendix B contains a list of documents that will assist housing providers in determining an applicant's identity.

Question 23. What should I do if someone who doesn't speak English comes to look for an apartment?

Prospective tenants with limited English proficiency or a heavy accent may be covered under the national origin protections in the fair housing laws if they are treated less favorably than applicants who speak English well. You cannot turn away an applicant simply because of an accent or because communication presents an extra challenge. Make every reasonable effort to usher such applicants through the normal rental procedures in English, just as you would for fluent English-speaking applicants.

Housing providers may not have the finances or the inclination to do business in any language other than English. Certainly, no one expects a landlord or manager to master the dozens of languages spoken by people in the region. Nor are they expected to translate their promotional materials, applications, or rental agreements to meet the language needs of all applicants. However, if

you operate in a community with many Spanish speakers, wouldn't it be a lot easier to provide a translated form that welcomes them, invites them to look at the current available units and provides basic information about the complex? Some forms are already translated into different languages, and resources are available for housing providers to get information translated into a few languages common to your neighborhood or area. Contact your local fair housing agency for additional information. Translated documents are not required, but they can make a manager's work a lot easier.

Question 24. Can I verify that someone is legally in the country?

Unlike employers who are held responsible if they hire someone who is not legally able to work in the U.S., housing providers have no similar responsibilities under the law and are not held accountable if any of their tenants are in the country without status. If you ask a tenant who is obviously from another country for proof of his or her legal status, you could risk a fair housing complaint based on national origin. Asking applicants if they are in the country legally is only acceptable under fair housing laws if you ask every applicant for proof of legal residency, not just those you assume are here illegally.

Question 25. What should I do if an applicant is a recent immigrant with no social security number and with little or no employment or rental history in this country?

Fair housing laws do not prevent a housing provider from making sure that tenants are able to pay the rent and follow the rules. Although screening criteria is commonly developed using standard information such as a social security number and past employment or rental history, alternative documents are available to determine if a recent immigrant is able to pay the rent and follow the rules. Appendix B contains a list of documents that will assist housing providers in determining an applicant's identity, past rental history and his or her credit or ability to pay rent.

Question 26. Is it okay to offer rental "specials" to induce more prospective tenants to apply?

Quoting different rental rates based on the general occupancy rate is a common practice; however, this practice may make you vulnerable to accusations of discrimination if a prospective renter notes differences in

quotes that appear to be related to his or her protected class. Here are some ways to minimize this risk:

- Put all special offers in writing and be sure that all staff are aware of them.
- Make certain all applicants hear about every rental special.
- Document all exceptions you make to your regular rental rates. If you offer a unit for less than other identical units, note why.
- Don't quote a rental rate based on a subjective assessment of what you think a particular applicant can pay. Rent should be calculated using factors such as the market, the property or the specific apartment.

Question 27. Can a housing provider legally refuse applicants because of their criminal record?

Having a criminal record is not a protected class under the fair housing laws; therefore, housing providers may establish screening criteria that rejects an applicant who has a criminal record. Convictions should not be confused with arrests, however. Patterns of arrest have been proven to be discriminatory against protected classes in some contexts, and as such, may be inappropriate to use as a screening criteria.

If an applicant's criminal record is related to his or her disability, then the applicant may request that the housing provider make a reasonable accommodation by allowing the applicant to establish that he or she has taken successful steps to assure that the criminal conduct caused by the disability will not recur. For example, an applicant who has completed a drug-addiction recovery program may request that you waive your criminal record policy for a conviction for possession of an illegal substance.

In addition, if you conduct criminal background checks, it would be considered discriminatory to do such checks only on certain applicants or to accept only some applicants with criminal records. For example, a housing provider should not conduct criminal checks only on African American males, or accept a female applicant with a record of assault but not a male applicant with a similar conviction. The key is to ensure that the process is fair and neither directly nor indirectly discriminates based on any protected classes.

Question 28. How do fair housing laws affect income and employment requirements?

Housing providers can have income and employment requirements as long as they apply them consistently, without regard to an applicant's protected

class. Here are some issues to consider:

- For Section 8 program participants, Housing Authorities have already made a determination that the tenant can afford their portion of the rent. The housing subsidy is a mechanism for ensuring that a low-income family can afford to rent an apartment in the private market. If you use income screening criteria (such as income equaling three times the rent), you should only calculate the Section 8 participant's portion of the rent.
- Most credit decisions utilize gross income as the basis for calculating the income to housing cost ratio. You should "gross up" non-taxed income such as social security. For example, a person with a disability on fixed income should have that income calculated to reflect the taxable income a person would have to earn to net the same amount.
- Requiring that a person's income be garnishable could be a violation of fair housing laws, especially for people on social security disability income. As a reasonable accommodation, you might consider waiving your garnishable income requirement for social security disability income.
- As a reasonable accommodation, you may be asked to waive a policy such as a "no co-signer" policy for an applicant with a disability.
- Consider aggregating the income of all household members to calculate the ratio. To calculate income, include verifiable employment, public assistance, social security, retirement/pension, asset/interest income, child support, adoption assistance, foster child support, food stamps, veteran's benefits, student employment and other types of cash income.
- Income stability may be as relevant as employment history. Keep in mind that a requirement that applicants must be employed might have a discriminatory effect on certain protected classes, such as people with disabilities or families with children.

Question 29. We expect tenants in our rental house to maintain the yard and make minor repairs. Can I ask female applicants if they can handle this work?

If you only ask female applicants if they can handle yard maintenance or repairs, you may increase your risk of having a fair housing complaint filed against you. It is best to notify all prospective tenants that the rental includes yard maintenance and repairs.

Chapter Three
Tenant Rules & Regulations

You can facilitate a neighborly environment among tenants and for yourself by establishing some basic rules of conduct and then applying those rules equally to all tenants.

Question 30. What are some things we should know about setting policies and enforcing rules at our complex from a fair housing perspective?

Fair housing laws require that your policies and rules do not single out tenants based on their protected class and that you do not enforce rules differently based on a tenant's protected class. To minimize the risk of violating the fair housing laws, review your policies for protected class language. For example, a policy that states, "children are not to run in the hallways" should be rewritten to prohibit noise and/or safety problems caused by tenants and guests of any age.

General good business practices often are good fair housing practices, too. Here are some useful practices to follow. Put your rules and policies in writing to ensure that all tenants are aware of them. Apply your rules and policies equally, regardless of a tenant's protected class. Treat tenants similarly when they don't follow rules (for example, make late rental payments, create noise disturbances, violate parking policy, etc.). Finally, keep thorough written records of all actions you take when enforcing tenant rules and regulations.

Question 31. When is it okay to warn tenants who violate the rules without violating fair housing laws?

Although fair housing laws can seem overwhelming or confusing at times,

they do not prevent you from warning tenants who break the rules, disturb others, create a nuisance, or do not pay rent. The fair housing laws simply require that you do not let a tenant's protected class enter into the equation. Again, to ensure that you are applying the rules fairly and complying with fair housing laws, be consistent and keep thorough written records.

Question 32. I am a good friend of a tenant who lives at the complex I manage. I usually put her repair requests ahead of other tenants' requests. Will that get me into trouble?

Through the course of managing a property, there may be tenants that you like more than others, but treating them more favorably may give rise to allegations of different treatment based on a person's protected class. Many fair housing complaints allege such different treatment. For example, a tenant might claim his rent increased by $20 per month while other tenants had no increase; or a tenant got a notice to vacate after paying rent late twice while a neighboring tenant who did the same received no notice. When tenants observe different treatment between themselves and others who are not their protected class, they may suspect their protected class is the reason.

During the course of a fair housing investigation, investigators will look at whether the housing provider applied the policies and rules fairly to every tenant, regardless of their protected class. If you give your friend's repair request priority, you may need to prove that your decision was not based on any tenant's protected class. If you treat anyone more favorably, this practice may make you more vulnerable to accusations of discrimination.

It's best to have clear rules and policies in place. Ask yourself if you are applying rules and policies similarly to all of your tenants–the answer should be yes! It's good business practice and wise from a fair housing perspective to keep thorough written records. These steps can assist you in avoiding fair housing complaints and will also greatly assist in expediting an investigation if a complaint is filed.

Question 33. What are some examples of evictions that could violate fair housing laws?

Evictions comprise a major portion of the fair housing complaints that are filed. The eviction process is a costly part of doing business, so be sure not to make it more costly by evicting for discriminatory reasons. When a tenant breaks rules that call for an eviction, know how to evict lawfully and be sure to

follow eviction laws consistently and fairly. Your eviction will comply with fair housing laws if the tenant's protected class is not a factor in the decision to evict—even if it is only one of several legitimate reasons for an eviction.

Here are some examples of situations that have resulted in discrimination complaints (some of these situations are not covered in all jurisdictions):

- a single woman is told that her partner is approved to move in with her, then is evicted when management learns that her partner is of a different nationality or race than the tenant
- an unmarried couple who does not intend to get married is asked to vacate when new management takes over a complex
- a married couple who lives in a one bedroom apartment is asked to vacate after management learns that the wife is pregnant
- tenants who have invited guests of a particular racial, ethnic or religious group for dinner or an afternoon at the pool are asked to vacate
- tenants who associate with people of a particular sexual orientation are asked to vacate

Question 34. When is it okay to evict tenants without violating fair housing laws?

As long as you are not considering the tenant's protected class (such as race, sex, national origin, etc.), it is okay to evict a tenant for valid, non-discriminatory reasons such as:

- Breaking the rules after being warned
- Being a clear nuisance to others
- Repeatedly being late with rent
- Refusing to pay rent
- Damaging the rental property
- Breaking public laws

Again, remember to be consistent and keep thorough written records.

Question 35. Can I offer senior discounts to those who always pay their rent on time and follow the rules?

The federal and state fair housing laws do not prohibit such discounts as long

as the discount policy is based solely on age, available to families with children, and is not otherwise operated in a manner that results in the exclusion of families with children.

However, under the Seattle, Tacoma, and King County Fair Housing Ordinances, age discrimination is illegal, including the offer of lower rent to a preferred age group.

If your intent is to offer discounts to increase the number of good tenants (those who pay rent on time, are quiet, obey the rules, etc.), for example, you could offer rebates or discounts to tenants who incur no rule violations within a one year period of time.

Question 36. Okay, we've heard "be consistent" over and over, but is there any time we can make an exception to the rules without risking an allegation of discrimination?

If you need to make exceptions when implementing the rules, make sure you document those exceptions carefully. For example, if you decide not to charge a late fee for a tenant who has consistently paid rent over three years, you might add a new rule that you will waive the first late fee if someone has been on time with rent for the previous x-number of months.

Another example came up recently at a fair housing agency. An applicant had a bankruptcy on his record that was only four years old and the screening rules did not allow tenants with bankruptcies less than five years old. He was from India and in the country for a year on a work assignment. He offered to pay a full year's rent in advance. When the apartment manager denied his offer, stating that she could not be inconsistent in applying the rules, he filed a complaint based on national origin. If someone offers to pay a whole year's worth of rent in advance, you may want to make an exception to your rules and establish a new rule for any future applicants who are able to overcome a bankruptcy like this.

Bottom line—analyze situations on a case-by-case basis when you make exceptions to a rule, don't make exceptions based on someone's protected class and make sure you document the reasons for the exceptions thoroughly.

Question 37. What records should I keep to document my actions as a manager?

To protect yourself, keep all written records concerning:

- payment records
- complaints from other tenants
- warnings issued (if you give someone a verbal warning, write a brief note reflecting what you said, the date and their response, and put it in the tenant's file)
- information leading to an eviction.

In the event a discrimination complaint is filed, an investigator will review these records to determine if a tenant of one protected class was treated less favorably than one of a different protected class. For example, a complaining tenant said he was evicted because of race, but the landlord said it was due to his habitual late payments. Investigation showed that the landlord kept outstanding records of everything. Whenever the tenant wrote the landlord saying he would be late with rent, the landlord saved it and followed up with a letter to the tenant. A review of the other tenant files showed similarly consistent record keeping and actions regardless of the tenant's protected class and the case was closed with a no reasonable cause finding.

In some circumstances, you may want to keep a daily or weekly log. For example, in a case involving multiple allegations of race discrimination from several families, the manager kept a detailed, daily log of her interactions and responses to the tenants' complaints and altercations. This log was very helpful in the investigation and also assisted management in recalling what actions were taken. Remember that a tenant has six months to a year to file a complaint, depending on the jurisdiction (and longer to file a lawsuit). So, keeping good records and logs when the incidents take place will help you respond to allegations of discrimination and will greatly assist in an investigation. You should also keep all applications, tenant files and prior policies on file for a reasonable period of time to be able to respond to any fair housing complaints or lawsuits.

Question 38. Are there any special fair housing issues we should be aware of or tips to assist our maintenance staff?

Maintenance employees are very visible and frequently interact with residents. When maintenance employees treat residents fairly and professionally, it goes a long way toward preventing fair housing complaints. Housing providers are responsible for the actions of all employees including maintenance staff, so it is very important to train your maintenance employees on all fair housing issues.

A common complaint that fair housing enforcement agencies receive is that members of one protected class get their maintenance requests handled

more quickly than do members of another protected class. To avoid this type of allegation, consider establishing a clear maintenance response policy and document your requests for repairs. For example, you might have a simple form where you record when you received a maintenance request, when you responded, and any explanation about why a response took longer than usual. A good way to avoid potential fair housing complaints is to let a tenant know why a maintenance request took a long time (a part had to be ordered, a new appliance was needed, etc.).

Chapter Four

Harassment

Harassment based on a person's protected class is prohibited under fair housing laws. In addition, housing providers have legal responsibilities under fair housing laws to respond properly to tenant on tenant harassment.

It is unlawful for an owner, manager or employee to create or maintain a hostile living environment for tenants because of their protected class. A housing provider can create a hostile living environment by selectively enforcing rules, making derogatory statements or slurs, ignoring maintenance requests, limiting access to amenities or taking other negative actions.

Your best prevention strategy is to write and periodically distribute a non-harassment policy to tenants, employees and contractors, and to train yourself and your direct employees on how to prevent and redress all forms of harassment. If a tenant reports harassment, be sure to respond quickly and effectively, and follow up with the tenant to ensure that the problem does not recur. Finally, remember to document everything.

For more detailed information, see the Sample Policy on Tenant on Tenant Harassment available from the Fair Housing Agencies of Washington State.

Section A: Sexual Harassment

Question 39. We have trained our employees on sexual harassment law in employment. How is sexual harassment law applied in housing situations?

The legal analysis for sexual harassment in housing borrows heavily from employment cases. Although HUD has not formally issued sexual harassment guidelines, some proposed HUD guidelines closely mirror employment decisions. The proposed guidelines stress the importance of having a written sexual harassment policy that is given to all tenants and taking prompt remedial action to address any harassment complaints. When you train your staff about their responsibilities and rights in an employment setting, you might consider adding a section on their responsibilities and

liabilities in the housing context.

Question 40. What types of conduct are considered sexual harassment?

Sexually harassing conduct can be verbal (derogatory remarks, slurs, jokes, intimidation, and even threats of violence), physical (body gestures, whistling, ogling, unwelcome touching or physical violence), or visual (inappropriate sexually-oriented written materials or pictures).

Under the law, a landlord can be found liable if the harassing treatment rises to the level of *"severe or pervasive"* conduct that creates a hostile living environment. Under this analysis, one incident will rarely constitute harassment. However, most courts hold that there is no magic number. For example, harassing episodes may have happened only two or three times, over a long period of time. In situations where the episodes were egregious, the courts have held that the "severe or pervasive" standard was met.

Sexual harassment also occurs when a tenant's housing is conditioned on agreeing to provide sexual favors to a manager or agent of the landlord. For example, it would be sexual harassment for a landlord to demand sexual favors in exchange for a rent reduction or a delay in the tenant's eviction. The legal term for this type of harassment is *quid pro quo* ("this for that").

Question 41. A resident of a building we own just informed us that a maintenance person told her he would respond more quickly to her repairs if she slept with him. What should we do?

This is another example of *quid pro quo* harassment. As owners, you are responsible for the behavior of employees, managers, maintenance workers, property management employees or other workers who come to your apartments. If a tenant complains of being sexually harassed, it's best to take prompt action intended to redress the harm and prevent it in the future. Follow up with the tenant to ensure there have been no further problems—and document everything!

You can deal more effectively with this type of situation if you have a written policy that clearly outlines what a tenant can do and who to contact if he or she believes staff harassment is occurring (provide contact information for the onsite manager, the property management company, or the owner in cases where onsite staff is implicated).

Section B: Disputes with Tenants

Question 42. A tenant told me that another tenant called him a racially derogatory name. Can't I tell him to handle it himself because I don't want to get involved in private tenant disputes?

If a tenant is being harassed because of his protected class, you have a legal responsibility to take action to stop the harassing behavior and ensure that it does not recur. A discrimination complaint can be filed against a housing provider who allows such harassment to continue after being put on notice that it has occurred.

Question 43. If a tenant complains that another tenant is harassing her and her children, what can I do?

The word "harassment" means different things to different people. When a tenant reports that she has been harassed, gather more specific information about what words and behaviors were involved so you can determine whether the harassment might have been based on the tenant's protected class.

If the tenant claims to have experienced threats of violence or actual physical violence, call 911 or urge the tenant to do so. You may want to develop an antiharassment policy for your staff and tenants. For more detailed information, see the Sample Policy on Tenant on Tenant Harassment available from the Fair Housing Agencies of Washington State. The following is an excerpt from that sample policy.

For non-emergency situations, let the complaining tenant know you take the complaint seriously and will conduct an investigation. Start your investigation right away.

- Interview the complaining tenant and any witnesses the tenant is aware of.
- Talk with other tenants who might have observed the harassing behavior.
- Speak with staff who may know what is going on.
- Interview the alleged harasser, and let him/her know that harassment based on someone's protected class will not be tolerated.
- Document all the information gathered in your investigation.

If you are unable to verify that harassment took place:

- Document the complaint and results of the investigation in both the

complaining party's and alleged harasser's files.

- Remind each individual alleged to have engaged in discriminatory harassment about management's serious commitment to a housing environment free of harassment and advise him or her that retaliation against the complaining party or others involved in the investigation will not be tolerated.
- Promptly inform the complaining party of the results of the investigation and the actions taken.
- For ongoing tenant conflict that cannot be verified as motivated by discrimination, staff may wish to refer tenants to the local Dispute Resolution Center or other local mediation services, or hire an outside consultant/mediator.

<u>If your investigation supports the harassment complaint</u>:

- Document the complaint and results of the investigation in both the complaining party's and alleged harasser's files.
- Proceed with progressive disciplinary action against the harasser up to and including eviction if necessary for ongoing or serious violations.
- Promptly inform the complaining party of the results of the investigation and the actions taken.
- Remind all parties that retaliation against the complaining party or others involved in the investigation will not be tolerated.
- Finally, monitor for retaliation against any person involved in the filing or investigation of a complaint of discriminatory harassment or intimidation. Your staff should deal with retaliation by the alleged harasser in the same manner as you deal with allegations of discriminatory harassment.

Section C: Domestic Violence

Question 44. We have a policy of zero tolerance for violence at our complex and recently issued a notice to vacate to a woman whose husband beat her and was arrested. Is this okay under the fair housing laws?

During 2001, HUD investigated a similar case in Oregon, where the female tenant believed that it was wrong to evict her for her husband's actions after she had done everything in her power to prevent further violence. HUD noted that the apartment management might have neutral reasons for their zero-tolerance policy. In the Oregon case, however, there was no evidence to support an assumption that people living near a household that has incidents of domestic violence will themselves become victims of that violence. HUD's determination pointed out that apartment managers need to take into account the individual circumstances of each case, as well as the actions a victim of domestic violence has taken to prevent a recurrence. In the Oregon case, HUD determined that sex discrimination had occurred, finding that the "policy of evicting innocent victims of domestic violence because of that violence has a disproportionate adverse impact on women and is not supported by a valid business or health or safety reason by the [apartment management]."

HUD determined that "[b]ecause domestic violence affects women disproportionately, this kind of zero-tolerance policy hurts women far more than men." HUD's decision cited national statistics showing that women are five to eight times more likely than men to be victimized by an intimate partner, and that 90-95% of victims of domestic violence are women.

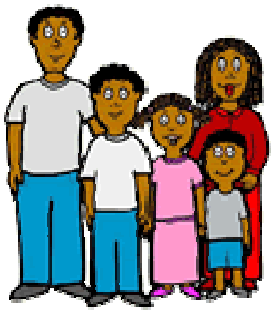
The Washington State Residential Landlord Tenant Act (RLTA), RCW 59.18, was revised in March 2004 to provide guidance for housing providers when tenants or applicants are victims of domestic violence, sexual assault, or stalking.

Question 45. When I screen prospective tenants, I deny housing to anyone who has a record of involvement with domestic violence. I don't ask whether the applicant was the victim or the perpetrator. I just don't want that type of trouble at my complex. What's wrong with that?

After the 2001 Oregon case, be wary of a policy that automatically rejects a woman with a record of domestic violence on her tenant screening information. Because 90-95% of the time the victim of domestic violence is a woman, this apparently neutral policy could have a disproportionately harsher impact on women.

To be on the safe side, if a woman with a record of involvement in a domestic violence incident applies for housing, ask her to provide information confirming that she was the victim of domestic violence. If she was the victim and otherwise can qualify to rent the home, you should process her application as you would anyone else's. Do not make generalizations that she will be bringing trouble to the unit—look at her circumstances individually.

As of March 2004, the RLTA now addresses this issue as well. (See Question 44)



Chapter Five
Families with Children and Housing for Older Persons

The 1988 amendments to the Federal Fair Housing Act added families with children as a protected class (fair housing laws refer to this as "familial status" or "parental status"). Families with children include households that have one or more children under the age of 18, pregnant women, and adults who intend to take custody of a child in the near future. Fair housing laws make it illegal to refuse to rent or sell to a family because they have children. Similarly, it is illegal to subject families with children to different terms and conditions of tenancy, harsher rules, or restrictions on the use of common areas.

An exception under the FHA allows a housing community/facility to refuse to rent to families with children if their tenants are 55 and older, or 62 and older, and certain conditions are met (discussed in more detail below in Section D).

Section A: Welcoming Families with Children

Question 46. Can I say "Families Welcome" in my advertising or on my community signage?

Yes. You may market to families with children without violating the fair housing laws. Indicating that families with children are welcome in a community does not deny any other protected class the opportunity to apply for housing.

Question 47. Should I avoid certain words or phrases to make sure I don't turn away families with children?

When advertising an available unit, avoid words or phrases such as "adult community" or "perfect for mature professionals" which may reflect a preference for tenants with no children. Also, avoid telling families that they might prefer to rent the complex down the street where there is a play area on-site or a location away from heavy traffic. Never assume you know what a family is looking for in a rental.

Question 48. Can I refuse to rent to a family with a young child if the available unit has an unsafe balcony or if the complex is near a busy intersection with no place for children to play?

No. Safety concerns are not a valid reason to deny housing to families with children. It is up to the family applying for an available rental unit to decide about safety concerns. If an unsafe condition exists on your property, you should seriously consider making it safe for all tenants so you can avoid general liability for injuries. If that is not feasible, make sure you point out safety concerns to **every** applicant, not just families with children.

Question 49. Can I have one building for families near a playground and have another quieter building for my tenants who don't have children?

No. This type of separation of families and other tenants into different buildings is called steering and is illegal. If a unit were available only in the "non-family" building, you would be denying a family a place to live until a unit became available in the "family" building. All prospective tenants should be shown all available units at the complex. Let them decide where they would like to live and don't make assumptions.

Question 50. If a long-term tenant asks me not to rent a unit above her to a family to keep the noise down, what should I tell her?

You may want to explain to your tenant that, under the local, state and federal fair housing laws, you cannot restrict the availability of any unit based on someone's protected class, in this case familial status.

Question 51. We have had problems with teens belonging to gangs and causing property damage. Can we refuse to rent to families with teenagers or charge them a higher damage deposit?

No. Familial status protections apply to all children under the age of 18. You may not single out a certain age group of children, such as teens. Under fair housing laws, this would be discrimination based on familial status (and under

local fair housing laws, it would be age discrimination as well). As stated in the tenant rules section below, if you have a problem with a member of a household, you should issue that family a violation notice. You will very likely be in violation of the fair housing laws whenever you make a generalization based on the actions of some tenants (in this case teenagers) and create a blanket rule based on that generalization.

Question 52. A couple with a 10-year-old son and a 13-year-old daughter wanted to rent a two bedroom unit. We told them they need another bedroom because two children of opposite sexes can't be in the same room. Don't HUD rules allow us to do that?

No. At one point, HUD had a rule in its subsidized housing that addressed children of opposite sexes, but HUD NO LONGER HAS THAT RULE. Denying a unit to a family because they have children of opposite sexes is a direct violation of the fair housing laws based on both familial status and sex. See Section C for information about establishing reasonable occupancy standards.

Section B: Family Friendly Rules and Regulations

Question 53. Many children at the complex ride their bikes on the sidewalks, making it difficult for tenants to walk to their units from the parking lot. We now have a rule that says, "children cannot ride their bicycles on the walkways." Is that okay?

Rules of conduct such as this one that apply only to children are unlawful under the local, state and federal fair housing laws unless they are carefully crafted to serve valid health or safety concerns. (See Questions 57 and 58) If you want to ban bicycle riding on the walkways, the rule must apply to all tenants regardless of age. The fair housing agencies welcome calls from housing providers with questions regarding the phrasing of your tenant rules.

Question 54. Some children at this complex caused damage to the common areas. Can I establish a rule that says, "parents are responsible for damage done by their children" and stop them from playing there?

No. As in Question 53, this rule specifically targets families with children. Tenants who signed the rental agreement can be held responsible for any damage caused by them, anyone residing in their apartment (children or adults) and their guests. Simply issue a notice to comply if a child causes damage—there is no need to have this additional statement in your tenant rules.

In addition, common areas that are available to tenants for recreation, such as a grassy area, must also be available to children for their recreation. Again, if a child or any other tenant causes damage, issue a notice for that tenant. You have a stronger likelihood of violating the fair housing laws if you make a blanket rule for all children based on the behavior of one or a few children.

Question 55. I have a rule that children's toys must be kept in their unit and may not be left in the halls or common areas. Is that okay?

Items from a tenant's unit are the responsibility of the tenant and should not be left in common areas or where they might create a hazard to other residents (such as stairs, halls and sidewalks). However, it would be discriminatory for a tenancy rule to single out only "children's toys" as not being allowed in common areas, so this rule should be rewritten so it is not directed only at children.

Question 56. Can we have a curfew at our complex to make sure kids don't loiter and cause problems at night?

Curfews or restrictions on the hours children may be outside their units are not allowed under fair housing laws. Policies outlining quiet hours and limiting noise should be contained in the general tenant rules and regulations and must be applicable to all residents.

Question 57. Our complex requires that all children under 18 have an adult present when using the pool. We also have adult swim hours so our adult tenants can swim laps. Are these rules allowed?

Housing providers who decide to post that an area requires adult supervision should be careful not to establish unnecessary restrictions. For example, rules excluding everyone under 18 years old without an adult present would likely be too strict. The safest policy is to look at existing health and safety rules and base your supervision requirements on those.

In accordance with Washington state law, Washington Administrative Code (WAC) 246-260-100, when no lifeguard or attendant is present at a pool, children 12 years or younger must have a responsible adult (18 or older) present. Under this law, it is permissible to require that children between the ages of 13-17 have at least one other person present who is 13 or older.

Pool rules should be reasonable for the use and enjoyment of **all** tenants. "Adult swim" hours are not permitted. You may want to designate part of the pool for lap swimming during certain hours of the day, open to all tenants.

Question 58. Our complex requires that all children under 18 have an adult present when using the sauna or the workout room. Can we do that?

Rules excluding everyone under 18 years old without an adult present would likely be too strict. Some areas might be dangerous for very young children, such as saunas or hot tubs. Washington state law (WAC 388-148-0170) requires "age and developmentally appropriate supervision of any child that uses hot tubs, swimming pools, spas, and other man-made and natural bodies of water."

Apparently, no state or federal laws exist governing the age of people who can safely use weight training equipment. If an agency received a complaint from a tenant whose child was required to have an adult present while using the workout room, an investigator would look to the industry standards. Fitness centers managed by local cities and private businesses do allow some children to use weight training equipment. Many fitness centers permit children aged 15-17 to use fitness equipment without adult supervision, and require adult supervision for children aged 13-15. Equipment manufacturers' height and weight recommendations may also provide reasonable guidance.

Section C: Occupancy Standards and Surcharges

Question 59. What is an occupancy standard and do I need to have one at my building?

The fair housing laws allow housing providers to establish reasonable limits on the number of occupants allowed in each unit. A housing provider does not need an occupancy standard, but if one is established, it must be reasonable. When a housing provider limits the number of occupants in a unit, it impacts families with children more severely than households without children. Under the fair housing laws, housing providers can set reasonable occupancy standards that are based on legitimate business needs. However, the adverse effect of occupancy standards on families with children requires that you justify the use of such standards. Every complaint filed by a family with children involving occupancy standards is reviewed on a case-by-case basis because each case presents a unique set of facts.

Question 60. I have heard that an occupancy standard of two per bedroom or two per bedroom plus one is considered reasonable. Is that correct?

HUD has established a policy that presumes that a two-per-bedroom occupancy standard is reasonable; however, this presumption is not absolute and the policy notes other considerations to keep in mind. Other fair housing jurisdictions have adopted occupancy policies allowing more than two people to a bedroom. All the enforcement agencies, including HUD, still review a number of factors to determine whether an occupancy standard is overly restrictive. Simply establishing a two-per-bedroom standard without making a determination of its reasonableness for the specific unit involved may not protect you from a finding that the standard is overly restrictive.

Question 61. How can I establish an occupancy standard that is reasonable when there is no clear guideline?

No clear rule or number is possible because the size and configuration of each rental unit is different. The safest way to establish an occupancy standard is to find out which fair housing, zoning or building occupancy code applies to your complex. For example, if your property is located in Seattle, Tacoma or unincorporated King County, simply measure the rooms in your unit and apply the occupancy code that applies in your location. (Summaries of the occupancy codes for Seattle, Tacoma and King County are available

online at www.metrokc.gov/dias/ocre/occupancy.htm). HUD and WSHRC use a set of factors set forth in guidance memoranda issued by each agency.

Be prepared to substantiate legitimate business-related factors, such as the age or condition of your dwelling and its accompanying systems (sewer, septic, electric, water, etc.) which you believe require a more restrictive occupancy standard. You should establish a clear relationship between the legitimate business-related factor and the occupancy standard. For example, if a septic system has a limited capacity, be ready to substantiate that factor by a statement from someone capable of making that determination. Also, be prepared to show whether you looked at other ways to address a limited septic system that do not require a restrictive occupancy standard, such as installing water-saving devices or pumping the system more frequently.

Additional factors could also be relevant in evaluating an occupancy standard case. For example, a fair housing enforcement agency analyzing the case may need to determine whether the occupancy standard is applied to the number of *people* or the number of *children* occupying a unit. The agency may also look at whether there is a history of "adults only" policies, segregation of families or rules directed only at children. Overall, the agency will determine whether there is any other information that supports or refutes the allegation that the occupancy standard is being used to bar or limit children from occupancy.

If you have questions about your occupancy policy, contact your local fair housing agency.

Question 62. I charge an additional $10.00 for each occupant over two at my mobile home park. Can I do that?

As with occupancy standards, when a housing provider imposes an occupancy fee or surcharge on each occupant over two, it impacts families with children more severely than households without children. Under fair housing laws, housing providers can set reasonable occupancy fees only when they are based on legitimate business needs. Remember, the adverse effect of occupancy surcharges or fees on families with children requires that housing providers justify the use of such fees. That means if you charge $10.00, you must be able to show exactly how you came up with that number. It cannot be a general number that you heard other parks were charging. You must be able to show how your utilities or other costs have increased because of these additional occupants over two. This is very difficult to prove. Some parks and apartments are installing individual meters to monitor costs directly to avoid having to make these difficult calculations.

Section D: Housing for Older Persons

Question 63. What is the Housing for Older Persons Act?

The Housing for Older Persons Act (HOPA) was signed into law on December 28, 1995, amending the FHA. Under the FHA, as amended, a community that qualifies for the housing for older persons exemption can refuse to rent or sell to families with children, provided it meets certain requirements.

Three types of housing qualify under HOPA:

- HUD Secretary designated elderly housing
- housing for residents who are 62 or older, whether private or assisted
- housing intended and operated for occupancy by residents who are 55 years of age or older.

For 55 or older housing, the following criteria must be met:

- At least 80% of the occupied units are occupied by at least one person who is 55 years of age or older;
- The owner or management of the housing facility/community must publish and adhere to policies and procedures that demonstrate an intent to operate as 55 or older housing; and
- The facility/community complies with rules issued by the HUD Secretary for verification of the age of the occupants through reliable surveys and affidavits.

Question 64. How can I show my intent to operate as a 55 or older property?

It should be clear to anyone driving by, calling about, or living at the property that the property is a 55 or older property.

- Any signage or printed material should include HOPA language stating that it is a “55+ Community” or an “Age 55 or Older Housing Community” or similar language.
- When you advertise or describe your property to prospective residents make sure they know that, under the Fair Housing Act, it is intended for occupancy by at least one person age 55 or older per unit. Avoid using phrases such as “adult living” or “adult community” or telling prospective residents that it is an “adult only” property.

- Make sure your lease provisions, rules, regulations and any written materials referring to your property indicate that it is a 55 or older property.

Question 65. How do I calculate the 80% occupancy requirement?

When calculating the 80% occupancy requirement, housing providers do not need to include units occupied by employees under 55 years old, unoccupied units, and units that have been continuously occupied by the same household since September 13, 1988, that do not contain at least one person over the age of 55.

Once 80% of the units are occupied by at least one person 55 or older, persons under the age of 55 may occupy the remaining 20% of units. Housing communities had a transition period, from May 3, 1999 to May 3, 2000, to meet the 80% rule. If an existing community did not meet the 80% requirement by May 3, 2000, it does not qualify for the exemption and is not presently considered a 55 or older housing community.

Question 66. How should I go about getting age verification?

HOPA requires that a housing facility/community compile a list of occupants and verify the ages of the occupants. A procedure for age verification should be developed and followed. A variety of documents are considered reliable as age verification documentation, including a birth certificate, a driver's license or a passport. The community should re-survey its lists of residents every two years to ensure that the 80% requirement is met. A community's failure to survey, or re-survey residents, in accordance with its age verification procedures could jeopardize the community's status as 55 or older housing. The housing community/facility would be required to produce these occupancy/age verification surveys if a discrimination complaint was filed, alleging, for example, that families with children were barred from renting. HUD's rule implementing HOPA has a list of various documents and other methods for verifying age.

Question 67. Can I have rules at my 55 or older property that say children under 18 are not allowed in certain common areas at certain times?

Yes. If your 55 or older property qualifies under HOPA, you are allowed to restrict the use of amenities to children under 18 who are guests of the

property residents. Generally, once a property is exempt from familial status protections under HOPA, it is exempt for all purposes and would be able to have such restrictions apply to its tenants. However, if the property is a project-based Section 8 elderly or elderly/disabled property, housing providers may not exclude otherwise eligible elderly families with children.

Chapter Six
People with Disabilities

Section A: Disability Law 101

Question 68. What disability laws apply to housing?

Fair Housing Act: The federal Fair Housing Act and local fair housing laws prohibit housing providers from discriminating against people because of their disability or the disability of anyone associated with them, and from treating people less favorably than others because of their disabilities. These laws also require housing providers "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person(s) equal opportunity to use and enjoy a dwelling." In addition, these laws require that housing providers allow tenants to make reasonable modifications to units and common spaces in a dwelling. Finally, these laws include accessibility design and construction requirements for covered multifamily housing.

Section 504 of the Rehabilitation Act of 1973: Section 504 prohibits discrimination based on disability in any housing, program or activity receiving federal financial assistance.

Americans with Disabilities Act: In most cases, the ADA does not apply to residential housing. However, **Title III** of the ADA covers public and common use areas at housing developments when these areas are open to the general public (such as a rental office) or when they are available for use by the general public (such as a community room that you rent to non-tenants). **Title II** of the ADA prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing, housing authorities, housing assistance and housing referrals.

Question 69. What is the difference between federal laws regarding disability and state and local laws?

Under the federal laws, a disability must "substantially impair a major life activity." Washington state law has a broader definition of disability than federal laws. The Washington State Law Against Discrimination, RCW 49.60, defines disability as "the presence of a sensory, mental or physical disability when a condition is medically cognizable or diagnosable, exists as a record or history, or is perceived." A condition is a "sensory, mental, or physical disability" if it is an abnormality and is a reason why the person having the condition did not get or keep the housing in question, or was treated differently, or was discriminated against in other terms and conditions of housing.

This state definition includes people with temporary disabilities. For example, a person with a leg injury who requires several weeks of recovery would be considered disabled under state law and should be given a temporary reserved parking space as an accommodation.

Question 70. Who is considered a person with a disability under federal and state law?

Under fair housing laws, the definition of disability includes people who have a current mental or physical disability. It also includes those who do not currently have a disability, but have a record or history of one.

These laws also protect people if they have no disability, but if others regard or perceive them as being disabled, and treat them negatively because of that perception.

Question 71. Who is not considered to have a disability?

The following people are not considered to have a disability under fair housing laws:

- current illegal drug users
- anyone with a conviction for the illegal manufacture or distribution of a controlled substance
- anyone whose tenancy would constitute a **direct threat** to the health or safety of others
- anyone whose tenancy would result in substantial physical damage to the property of others.

To establish direct threat, a housing provider needs recent, objective evidence of behavior that puts others at risk of harm. Also note that, in some circumstances, even someone who may be considered a direct threat or who has caused substantial property damage may request a reasonable accommodation during the eviction process by presenting information that he or she has taken steps to prevent future harm. The housing provider has a duty to consider the reasonable accommodation before taking action.

Section B: Welcoming People with Disabilities

Question 72. Can I market my accessible units to people with disabilities?

Under the fair housing laws, you may affirmatively market your available accessible units to people with disabilities. Advertising that a unit is accessible is not only legal under the fair housing laws, it is encouraged. The fair housing agencies receive frequent calls from apartment managers asking how they can fill their accessible units. Contact your local fair housing agency for a list of resources to assist you in marketing your available accessible units.

Question 73. What questions can I ask prospective tenants about disabilities?

Generally, housing providers should only ask a person with a disability questions that are asked of all applicants or tenants. It's okay to ask questions such as:

- Can you pay the rent?
- Do you have references regarding your tenant history?
- Will you comply with the rules?
- Do you have a criminal history?
- Are you currently using illegal drugs?
- Have you been convicted of the illegal manufacture or distribution of a controlled substance?

If your housing is designed or designated for people with disabilities, you can ask every applicant if he or she qualifies for the housing.

Also, if a potential tenant requests a reasonable accommodation, a landlord

can request verification of the person's need for the requested accommodation.

Question 74. What questions should I avoid?

You should not ask the following questions:

- Do you have a disability?
- Do you take medication?
- How severe is your disability?
- Why are you getting SSI?
- Can I see your medical records?
- Have you ever been hospitalized for mental illness?
- Have you ever been in drug or alcohol rehab?
- Are you capable of living independently?

Question 75. What other ways can I welcome people with disabilities?

Some disabilities are obvious and some are not, so let all applicants and tenants know that you will provide reasonable accommodations upon request. You may want to include a notice in your pre-printed application materials and in your tenant rules that states your willingness to provide reasonable accommodations.

Develop a reasonable accommodations/modifications policy to distribute to your tenants. Train your staff on how to respond to reasonable accommodation requests in a timely and professional manner. For more detailed information, see the Sample Policy on Reasonable Accommodations available from the Fair Housing Agencies of Washington State.

Finally, make sure that your complex meets the accessibility standards under the state and federal fair housing laws. For older buildings, make sure that your complex has an accessible leasing office and an accessible route from public transportation to your leasing office.

Section C: Reasonable Accommodations

Question 76. What is a reasonable accommodation?

People with disabilities may have special needs due to their disabilities, so in some cases, simply treating them the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, adaptation or modification to a policy, program or service, which will allow a person with a disability to use and enjoy a dwelling, including public and common use spaces. Examples of reasonable accommodations include providing rental materials in alternate formats such as large print, providing a reserved accessible parking space near a tenant's apartment, or allowing a tenant to have a service animal in a "no pets" building. See Appendix C for a list of common accommodations and modifications. For information about who pays for accommodations, see Question 91. For more detailed information, see the Sample Policy on Reasonable Accommodations available from the Fair Housing Agencies of Washington State.

Question 77. How do I know if someone needs an accommodation?

The duty to accommodate arises when the housing provider has knowledge that a disability exists and that an accommodation may be required for the disabled person to use and enjoy the housing. Generally, the applicant or tenant must make a request for an accommodation.

Fair housing disability laws do not prescribe a uniform procedure for requesting a reasonable accommodation or modification. To make a request, an individual does not need to mention fair housing disability laws or use the phrase "reasonable accommodation." In general, a tenant or applicant should make clear to the housing provider that he or she is requesting that an exception, change or adjustment be made to a rule, policy or practice because he or she has a disability. The tenant should describe what type of accommodation is needed and explain the relationship between the requested accommodation and the disability. Although not required by fair housing disability laws, it is helpful if these requests are made in writing, so there will be documentation of the request.

It is advisable for a housing provider to establish a process for responding to requests for accommodations and/or modifications. Keep in mind that a tenant cannot be required to use a specific form for such requests, and a housing provider cannot refuse to provide an accommodation or modification

just because the tenant has not used the provider's form.

Question 78. If a tenant requests an accommodation, can I require documentation that the tenant really needs the accommodation?

You may request the tenant to provide written verification from the tenant's healthcare or mental health provider that the tenant has a disability and needs the accommodation requested (the provider need not be an M.D.). You can require proof that the tenant is disabled, but cannot require the tenant to provide specific information about the disability.

Question 79. How do you tell if a request is "reasonable" or not?

An accommodation is reasonable if it is related to the tenant's disability needs, is not an undue administrative or financial burden for the housing provider, and does not fundamentally alter the housing and services the housing provider offers. All requests for accommodation must be considered and should be analyzed on a case-by-case basis. This should be an interactive process between the housing provider and the tenant. If the tenant's proposal is not feasible or is an undue burden, the housing provider can suggest alternative accommodations that meet the tenant's needs; however, the tenant is usually in the best position to know what accommodation will meet his or her needs.

Question 80. A tenant who recently began using a walker to get around has requested a move to a ground floor apartment. Must I allow her to move?

If a ground floor unit is available, you should provide it to the tenant as a reasonable accommodation. If no unit is available, some other options could include giving the tenant first choice of moving into the next available ground floor unit or allowing her to break her lease to move to another complex that meets her needs.

Question 81. We have a "no pets" rule and a tenant with a disability has asked to keep a "service animal." What do I need to know about these animals?

It is a reasonable accommodation for housing providers to allow tenants with disabilities to live with service animals in order to meet their disability-related

needs. A service animal (also referred to as an assistance animal) usually is defined as "any animal that is individually trained to do work or perform tasks for the benefit of a person with a disability." Fair housing laws also consider “emotional support” or "companion" animals to be a type of service or assistance animal.

- Service animals are **not** considered to be pets. A person with a disability uses a service animal as an auxiliary aid—similar to the use of a cane, crutches or wheelchair. For this reason, fair housing laws require that housing providers permit the use of a service animal by an individual with a disability despite "no pet" rules.
- Dogs are the most common service animals, but other species are used (for example, cats or birds). Service animals may be any breed, size or weight. In rare cases, an individual with a disability may require more than one service animal.
- Pet deposits or fees **cannot** be charged for service animals. A tenant can be charged for damages caused by the animal. All tenants can be charged a security deposit.
- A tenant with a service animal is responsible for the animal’s care. The animal’s owner should observe leash laws, properly dispose of animal waste, and ensure the animal behaves around other tenants and does not break tenancy rules (such as noise rules).
- There is no legal requirement for service animals to be visibly identified (no special collar or harness are needed) or to have documentation (no license, training certification or identification papers are needed). A housing provider can require that the animal meet state or local health and licensing requirements.
- If other tenants ask why a tenant has an animal in a “no pet” complex, a helpful response is to let them know you are complying with the fair housing laws. Stop there—don’t mention disability. Ideally, all of your tenants should be aware of your reasonable accommodations policies and your service animal policies, so service animals should not be a new concept for them.

For more detailed information, see the Sample Policy on Service Animals available from the Fair Housing Agencies of Washington State.

Question 82. An otherwise qualified applicant asked to have a Rottweiler as a service animal, but our insurance company will not insure certain breeds, including Rottweilers. What should we do?

You should ask your insurance provider to make a reasonable

accommodation in their policy under the fair housing laws. Request the insurance company to waive their blanket prohibition of a certain breed, and instead to make an individual assessment of this service animal's behavior. If there is no evidence that an individual service animal is dangerous, the insurance company may have a hard time defending a denial of a reasonable accommodation request. Both you and the applicant could file fair housing complaints against the insurance company. If found in violation of the fair housing laws, the insurance company could be responsible for any damages that you and the applicant incur waiting for them to respond to the request.

Question 83. *A tenant with a disability has requested a reserved accessible parking space in our complex that has no assigned parking. Must we provide this?*

If you provide parking for tenants, it is a reasonable accommodation to provide a reserved accessible parking space when a tenant with a disability requests it. Here are basic guidelines:

- Many tenants who need an accessible parking space don't need an extra-wide space with an access aisle. They may only need a regular-size parking space nearest to their front door (or on the most accessible route to the front door). Discuss with the tenant his or her needs for parking.
- Even if you usually do not assign parking spaces to specific tenants or units, provide a reserved parking space to a tenant with a disability. Be sure to post a sign at the head of the parking space saying the spot is reserved and enforced. It should be marked as reserved so that other people with disabilities don't park there.
- Guest parking is likely subject to ADA Title III rules, which require that at least 2% of all guest spaces in any lot meet access requirements and be designated with appropriate signage. These spaces must be at least 96" wide and must have an adjacent access aisle at least 60" wide, which allows room for a wheelchair, electric scooter or other mobility device. An access aisle can be shared between two accessible parking spaces. At least one of these spaces must be van accessible with a 96" access aisle.
- If the rental office is on-site, be sure to locate at least one accessible guest parking space next to the office.
- You must enforce a tenant's reserved accessible parking space and general accessible guest parking spaces. Remember that the parking spot you provide to a tenant in response to an accommodation request is separate from and in addition to any general accessible spots provided for the public or tenants and their guests.

- Your standard accommodations policy can be used for accessible parking requests. If a tenant has a state disabled parking permit, this is generally sufficient proof of the need for a reserved accessible parking space.

Cooperative housing and condominiums where a board or group has only limited control over parking spaces presents a more complicated situation. Boards should provide assistance within their means to the person seeking the parking accommodation. If the space desired is under the control of the owner of another unit, the two owners must be allowed to negotiate a swap or some other means for the person with the disability to have an accessible space closest to his or her unit. Careful analysis will ensure that the law is applied properly. Boards of cooperative housing have a responsibility to accommodate a reasonable request.

Question 84. I just learned that a 13-year-old at our complex who frequently swims with his 15-year-old brother has epilepsy. I sent a notice to his mother informing her that her son may not swim without her or another responsible adult present. Is that okay?

Under Washington state administrative law, a 13- and 15-year-old are allowed to use the pool together without an adult present. It is discriminatory to apply apartment rules differently to tenants with and without disabilities for any purpose other than to provide a reasonable accommodation so that a person with a disability may equally use and enjoy the dwelling. Managers should not formulate special rules for people with disabilities based upon perceived stereotypes or a belief that the person with a disability is an increased liability.

Question 85. I've received noise complaints about a child with a developmental disability. What steps can I take to resolve this issue?

Housing providers have a right to establish reasonable noise regulations for the comfort and peaceful enjoyment of all tenants. If the noise occurs during the day and is no louder than that made by other tenants (or the typical child), it would be discriminatory to treat this child differently than others. However, if the noise is excessive or occurs after hours, you can advise the family that they must obey the noise policy. If they request some time to pursue an intervention to assist them with keeping the noise down during quiet hours, you should allow that as a reasonable accommodation.

Question 86. Tenants are complaining about the odd and threatening behavior of another tenant. To keep them happy, we issued him a violation notice. His sister then notified us that he has a psychiatric disability. What should we do?

You should determine whether the tenant's behavior is only odd or whether it actually violates a tenancy rule. If the tenant is merely eccentric, he has broken no rules. You should issue a violation notice only when a rule has actually been violated.

If the tenant's behavior is not only odd, but violates some rule (for example, he disturbs other tenants by knocking on their doors in the middle of the night), then you may need to consider the effect, if any, of the tenant's disability on his behavior. If his disability is the cause of his behavior, it may be appropriate for you to inquire whether he or his sister have taken steps to minimize or eliminate the odd behaviors that result in rule violations.

However, tenants also complained of "threatening" behavior. Fair housing laws do not require that a dwelling be made available to an individual whose tenancy would constitute a "direct threat" to the health or safety of other individuals. You can consider safety factors in deciding what to do and should determine whether the tenant's behavior is a direct threat.

Please note that a direct threat is a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced to an acceptable level through interventions allowed by a reasonable accommodation. This threat must be real and may not be based on generalizations or stereotypes about the effects of a particular disability. If the threat cannot be minimized or eliminated, you have a right to ask the tenant to leave. However, if the tenant's family is pursuing treatment and/or other support interventions, you should allow them time to put those plans into place as an accommodation before asking him to leave. If the tenant's behavior poses an imminent direct threat to others while the plan is being put into place, appropriate authorities can be called to remove him.

Question 87. Even though we've accommodated him several times, a tenant with a disability keeps making accommodation requests. How many accommodations do we have to provide?

An individual with a disability can request reasonable accommodations or modifications whenever they are needed. For example, requests may be made when an individual is applying for housing, when entering into a rental agreement, while occupying housing, and even during an eviction process. Individuals who become disabled during their tenancy may request accommodations, even if they were not disabled when they moved in. Evaluate each request in a timely and professional manner, and document your interactions with the tenant.

Question 88. After we served a tenant with a summons for an unlawful detainer action, he asked for a reasonable accommodation and expects us to work with him to help him remain a tenant. Do we have to do this at such a late stage?

Housing providers are required to provide reasonable accommodations at all points in the housing process—even at the eve of a termination of tenancy. Keep in mind that people with disabilities are not obligated to reveal their conditions and they might not do so unless they need an accommodation. It may be that a tenant realizes that a reasonable accommodation is necessary only after he or she receives an eviction notice.

It's a good idea to let applicants and tenants know that you will provide reasonable accommodations upon request. You can include a notice on your application form, in tenant rules and even with your notices to comply or vacate that states your willingness to discuss accommodations that might address the rule violations that led to the eviction notice.

Question 89. Are there any circumstances when I don't have to provide an accommodation or modification?

The request must not impose an undue financial and administrative burden on the housing provider. Note that "undue burden" usually takes into consideration the housing provider's entire resources. For example, if an applicant who uses a walker prefers a third-story apartment to a ground floor

unit in a 1926 walk-up building, the housing provider does not have to install an elevator if such a modification is cost prohibitive.

The requested accommodation or modification must not require the housing provider to make a fundamental alteration in the nature of the provider's operations. For example, if a tenant with a disability cannot do his own housekeeping and the housing provider does not supply housekeeping for tenants, a request for such services would not be reasonable.

Note that where a particular requested accommodation or modification is not reasonable, the housing provider is still obligated to provide other requested accommodations or modifications that do qualify as reasonable.

Section D: Reasonable Modifications

Question 90. What is a reasonable modification?

A "reasonable modification" is a physical change made to a tenant's living space or to the common areas of a complex, which is necessary to afford a tenant with a disability full enjoyment of the housing. For more detailed information, see the Sample Policy on Reasonable Accommodations available from the Fair Housing Agencies of Washington State.

Question 91. Who pays for disability accommodations and modifications?

The housing provider is responsible for ensuring general access to the facility and meeting minimum accessibility standards. Moreover, fair housing disability laws require that in making an accommodation, a housing provider is required to bear costs that do not amount to an undue financial and administrative burden. This means that a housing provider may be required to spend money to provide legally required reasonable accommodations to rules, policies or practices, most of which are no or low cost.

Generally, the tenant is expected to cover the expenses of making reasonable physical modifications to a property. However, if the property receives federal funds under Section 504, the housing provider usually pays, unless they can prove financial or administrative hardship. The hardship is determined by looking at the cost of the modification in light of the total budget of the complex.

Question 92. If a tenant makes a modification, how can I be sure it's done in a professional manner, with proper building permits?

A housing provider may condition permission for a modification on the renter's providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a professional manner and that the renter will obtain any required building permits.

Question 93. Can I require that the modifications be removed when a tenant with a disability moves out?

Where it is reasonable to do so, a rental housing provider may condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. However, the tenant need not restore the interior to its previous condition when the modifications that were made would not interfere with the next tenant's use and enjoyment of the premises.

Question 94. Can I charge a tenant with a disability an increased security deposit to cover the costs of restoring a unit?

The housing provider may not require an increased security deposit for tenants who wish to make modifications, but the provider may negotiate an agreement that the tenant pay into an interest-bearing escrow account, over a reasonable period, an amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

Question 95. Our building was built in the 1950s. Do I have to let a tenant who uses a wheelchair modify his unit?

Yes, this tenant may need the kitchen countertops lowered, the interior doorways widened and bathroom walls reinforced to install grab bars. You may ask for a description of the proposed modifications as well as reasonable assurances that the work will be done in a professional manner and that any required building permits will be obtained. To ensure restoration, you may also have the tenant pay into an interest-bearing escrow account, over a reasonable period, an amount of money not to exceed restoration costs.

At move out you may require the tenant to raise the kitchen countertops and remove the bathroom grab bars; however, you should not require the tenant to make the doorways narrow again or to remove the wall reinforcement.

Section E: Access

Question 96. What are the benefits of accessible housing?

Accessible housing is not only mandated by federal and state laws—it makes a property more marketable and benefits everyone. When housing is accessible, prospective tenants, current tenants, guests—with or without disabilities—have a safer and more convenient environment in which to live. Accessibility features also allow housing providers to adapt to the changing needs of their tenants, many of whom wish to age in place.

In Washington State, housing providers should be familiar with three basic laws that address accessible housing: ADA, Title III; the Washington State Barrier-Free Design Regulations; and the FHA.

Question 97. My complex was built before 1976. What accessibility standards apply?

Title III of the ADA applies to public areas at your complex, including rental offices, community rooms that are available to the public, and any route of travel from public transportation to those areas. You should remove barriers that impede the access or use of these areas for a person with a disability where such removal is “readily achievable.” Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense." Whether an action is readily achievable is determined on a case-by-case basis. Some of the factors considered are the nature and cost of the action needed, and the overall financial resources of the housing provider. If you are planning any additions or alterations to your complex, you should refer to the state and federal laws for new construction discussed below to make sure you are complying with the applicable standards.

Question 98. What are the general access standards for buildings constructed after 1976?

The Washington State Barrier-Free Design Regulations were adopted in 1976. These regulations established accessibility standards in the common areas and also added access standards for individual dwelling units.

If your complex was constructed after 1976 and has 11 or more units, at least 5% of the units, with a minimum of one, must meet what is presently designated as a "Type A" dwelling unit. "Type A" dwelling units require greater maneuvering space in the kitchens, bathrooms and doorways, to better accommodate wheelchair users.

Question 99. What additional standards apply to buildings built after March 13, 1991?

Your complex is covered under the FHA if it has four or more units and was constructed for first occupancy on or after March 13, 1991. Under the FHA, all units in an elevator building must be accessible and all ground floor units in a non-elevator building must be accessible.

Under the FHA, buildings built after March 13, 1991, must have:

1. an accessible entrance on an accessible route
2. accessible public and common use areas, including parking areas, curb ramps, passenger loading areas, building lobbies, lounges, halls and corridors, elevators, public restrooms, rental or sales offices, drinking fountains or water coolers, mailboxes, laundry rooms, community and exercise rooms, swimming pools, playgrounds, recreation facilities, nature trails, etc.
3. usable doors
4. accessible routes into and through the dwelling unit
5. accessible light switches, electrical outlets, and environmental controls
6. reinforced walls in the bathroom to allow later installation of grab bars and
7. usable kitchens and bathrooms.

Question 100. What standards should I follow for buildings built after July 1, 1992, in Washington state?

If your building was constructed after July 1, 1992, you should look primarily at the current Washington State Barrier-Free Design Regulations, codified under WAC 51.40. Effective July 1, 1992, these regulations incorporated the FHA and the ADA. For example, under the current regulations all units in buildings with four to ten units must have certain minimum access features. For buildings with 11 or more units, the previous 5% accessible "Type A" units are required, but the remaining units must also have certain minimum access features (designated as "Type B" units).